



October 18, 2000

Ms. Lillian Guillen Graham
Assistant City Attorney
Office of the City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2000-4046

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140394.

The City of Mesquite (the "city") received a request for information relating to a specified shooting incident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108(b) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted materials include information which is not subject to the Public Information Act. Release of an individual's medical records is governed by chapter 159 of the Occupations Code, the Medical Practice Act (the "MPA"). *See* Open Records Decision No. 598 (1991). The MPA protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Occ. Code § 159.002(b); *see also* Open Records Decision No. 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We have marked the documents that may only be released as provided by the MPA. *See* Occ. Code §§ 159.002(c), 159.004, 159.005.

Additionally, it appears that some of the records you submitted as responsive to the request were prepared by emergency medical service paramedics. Release of these records is governed by section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Therefore, you must withhold most of the information contained in the EMS records. However, subsection (g) of section 773.091 specifically provides that information as to "the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient receiving emergency medical services" is not protected by the confidentiality provisions of section 773.091. Thus, such information must be released unless it is confidential under other law. We have marked the information that is subject to section 773.091 of the Health and Safety Code.

The remaining information is subject to the disclosure requirements of chapter 552 of the Government Code. Section 552.108(b) provides

[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the [public disclosure] requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution.

This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3(1986). We generally presume that release of information that relates to a pending or ongoing investigation or prosecution will interfere with the investigation or prosecution of that case. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). You relate that two charges of aggravated assault related to the subject incident are currently pending prosecution. We conclude that submitted information is excepted by section 552.108(b)(1).

Note, however, that "basic information" is not excepted by this section. Gov't Code 552.108(c). We believe such basic information refers to the "front page" information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). You argue that the identity of the complainant may be withheld under the informer's privilege aspect of section 552.101 of the Government Code. However, information which identifies a complainant is front page offense report information that is generally considered public. *Id.* Front page offense information may be withheld from disclosure only in special circumstances. Open Records Decision No. 393 (1983). Here there has been no demonstration of special circumstances. In Open Records Decision No. 127

(1976) this office summarized the types of information considered to be basic information to include a detailed description of the offense, time and location of the crime, identity of persons arrested, identity of the complainant and identity of the investigating officers. You indicate that you have released some such information. Any front page information that you have not previously released, including the identity of complainants, must now be released.

In summary, responsive information subject to chapter 159 of the Occupations Code or to section 773.091 of the Health and Safety Code must be released only in accordance with the respective provisions of those statutes. Except for basic information, the department may withhold the remaining responsive information from disclosure under section 552.108 of the Government Code.

As this discussion disposes of this request, your arguments raised under other sections of the Government Code will not be addressed, other than to note that section 552.103 of the Government Code does not except "basic" information about a crime or arrest from disclosure. *See* Open Records Decision No. 597 (1991). This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

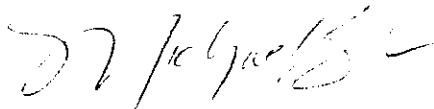
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 140394

Encl: Submitted documents & audio tape

cc: Ms. Shira Ann Hukill
514 Cassidy Lane
Dallas, Texas 75217
(w/o enclosures)